S.B.Criminal Misc. Petition No. 1038/2004
(Dinesh Nehra Vs. State of Rajasthan & Anr.)

Date of order : 10.07.2006

HON'BLE MR.H.R.PANWAR,J.

Mr. C.S.Kotwani for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. K.D.Singh for the non-petitioner No.2.

This criminal misc. petition under Section 482 Cr.P.C., is directed against the order dated 19.8.2004 passed by Additional Sessions Judge No.1, Sriganganagar (for short 'the revisional court' hereinafter) in Criminal Revision No.77/03 whereby the revisional court dismissed the revision petition filed by the petitioner against the order dated 27.8.2003 passed by Judicial Magistrate, Ist Class No.1, Sriganganagar (for short 'the trial court' hereinafter).

Heard learned counsel for the parties. Perused the order impugned.

The petitioner claims himself to be juvenile on the date of occurrence as envisaged under Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for

short 'the Juvenile Justice Act' thereafter) and relied on a school certificate and requested the trial court to transfer the case to the Juvenile Justice Board. The counsel appearing for the contesting non-petitioner opposed the request. The trial court directed the petitioner to file record of his Saving Bank Account No.3375 by which the petitioner obtained the cheque book as also the medical certificate.

From the perusal of the order impugned, it appears that the trial court has not determined the age of the petitioner in accordance with the provisions of Juvenile Justice Act. It is settled law that when a person seeks determination of age under the provisions of Juvenile Justice Act, then both the parties are to lead evidence and on the basis of evidence, the Court is to determine as to whether on the date of occurrence, the person was juvenile or not.

In the instant case, the matter is in the process of determining the age of the petitioner. The trial court has not determined whether the petitioner is juvenile or not, on the contrary, directed the petitioner to file the documents.

Having regard to the facts and circumstances of the case, it is expedient to direct the trial court to determine the age

of the petitioner in accordance with the provisions of Juvenile Justice Act allowing both the parties to lead evidence in support of their claim and to appreciate the same.

The petition is accordingly disposed of. Stay petition also stands disposed of.

(H.R.PANWAR), J.

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